UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOY EVANS, *et al.*, Plaintiffs, and UNITED STATES OF AMERICA, Plaintiff-Intervenor, v. ADRIAN M. FENTY, *et al.*, Defendants.	)	Civil Action No. 76-293 (ESH/JMF)

HEALTH CARE AGREEMENT

On March 30, 2007, the Court found that the defendants had failed to ensure the health, safety, and welfare of *Evans* class members. The Court found that the defendants' non-compliance with existing Court Orders was systemic, continuous, and serious.

The Fenty Administration has begun to take a number of measures to address outstanding concerns. For example, in recent months, the defendants have taken a number of short-term steps intended to increase the number of quality providers in the service-delivery system and the defendants have also begun certain short-term measures aimed at improving health care for a limited number of at-risk class members. The parties[1] recognize, however, that more comprehensive and systemic measures are required to address outstanding issues, especially with regard to health care. To that end, the parties have negotiated this Health Care Agreement ("Agreement").

The purpose of this Agreement is that the measures set forth in this Agreement will provide the foundation for significant systemic health care improvements at the provider level, and, therefore, will improve health care outcomes for both *Evans* class members and other consumers.

1. The Effective Date of this Agreement is the date it is filed with the Court.

2. This Health Care Agreement is to be enforceable. The parties shall request that this Health Care Agreement be entered by the Court and be enforceable as an Order of the Court.

[1] For purposes of this Agreement, the word "parties" refers only to the plaintiff-intervenor and the defendants.

The plaintiff-intervenor has forgone seeking judicial relief and all discovery at this time because of this Agreement.

3. This Health Care Agreement does not affect the parties' rights and obligations under existing Court Orders in this case, including the 2001 Plan for Compliance and Conclusion ("2001 Plan"), which the Court approved, pursuant to an Opinion and Order, in March 2001. The defendants understand that the plaintiff-intervenor may, at any time and in their sole discretion, seek judicial relief for alleged non-compliance with the Court's Orders and the 2001 Plan.

4. Consistent with past practice, the plaintiff-intervenor will attempt to communicate clearly with the defendants about outstanding issues and try resolve differences short of litigation whenever possible.

5. The parties anticipate that throughout the next 24 months, they will continue to work together, as they did during the initial settlement process, to identify new issues, as well as strategies and steps to address these issues.

6. The parties will designate five individuals to work together to ensure that needed actions are taken to implement this Agreement: Richard J. Farano, Senior Trial Attorney (or designee), U.S. Department of Justice, for the plaintiff-intervenor; Laura L. Nuss, Deputy Director for the Department on Disability Services ("DDS"), Developmental Disabilities Administration ("DDA"); and Mark D. Back, DDS Acting General Counsel, for the defendants. The defendants agree that the attorneys in the group may talk to Laura Nuss outside the presence of the defendants' counsel. Elizabeth Jones, the Court Monitor, may attend these meetings to assist the group by providing facts, context, and background; consistent with her monitoring role, the Court Monitor will not be involved in the group's decision-making with regard to implementation issues.

7. For purposes of this Agreement, the lead person for the defendants is Peter J. Nickles, Interim Attorney General for the District of Columbia, who is accountable on behalf of the Fenty Administration and will be ensuring that the defendants generally meet their obligations under this Agreement. For all other purposes (i.e., contracting and procurement, fiscal, and other administrative accountability), the lead person for the defendants for this Agreement will be Laura L. Nuss, DDS Deputy Director for DDA, who will be responsible for day-to-day implementation, operation and coordination of resources, communication and follow-up with all system stakeholders. The District will hire a point person to assist Laura L. Nuss in her oversight, operation, and coordination role.

8. The parties recognize that implementation of this Health Care Agreement will implicate the adequacy of the health care and other services that class members receive going forward. Pursuant to existing Court Orders, the parties recognize that the Court Monitor already examines, and the parties support the Monitor continuing to examine, the adequacy of health care and other services that class members receive. In monitoring health care issues going

forward, the Court Monitor will continue to be sensitive to and respectful of the defendants' issues and concerns, especially with regard to scheduling or other matters related to the defendants' implementation of this Health Care Agreement.

9. The defendants will provide a quarterly report to the plaintiffs, the plaintiff-intervenor, the Court Monitor, and the Special Masters about activities, outcomes, and accomplishments related to their implementation of this Health Care Agreement. The defendants will also facilitate the exchange of questions and answers between the participants related to these reports and the defendants' implementation efforts in general.

10. The defendants' health care quality measures, set forth in this Health Care Agreement, are designed to ensure that all individuals served by DDA will receive the benefit of this Agreement. The Defendants' health care quality measures, at least at their inception, will focus on the providers serving high health risk *Evans* class members. The defendants anticipate that the results derived from these health care quality measures ultimately will be available to and benefit the entire DDS service delivery system. However, neither this Agreement nor the activities contemplated by this Agreement shall be interpreted by any of the parties as expanding the scope of the *Evans* class or expanding the scope of the *Evans* case.

11. The defendants will immediately begin implementing this Agreement on the Effective Date. The parties anticipate that the defendants will have implemented all provisions of this Agreement within 24 months of the Effective Date. Provided the defendants have complied with all provisions, the parties may agree to jointly ask the Court to terminate the Agreement prior to the end of the 24-month term. If the parties agree that there is non-compliance, or if there is a dispute about compliance, the parties will so inform the Court. The parties may agree jointly at any time to allow for additional time to resolve compliance issues. Even if the Agreement has been terminated and/or defendants have been determined to be in compliance, the defendants anticipate continuing the effective reforms of this Health Care Agreement beyond the 24-month term of the Agreement. Nonetheless, the defendants retain the right, at such time, to reassess whether or not any particular reform has proven effective and should be continued under the same terms as outlined in this Agreement. Regardless of whether or not particular reforms continue beyond the life of this Agreement in the same form, the defendants commit to maintaining effective measures to ensure the ongoing health, safety, and welfare of affected individuals.

12. The parties agree that health care quality, which is perhaps the most important measure, is not the only substantive area for which improvement is needed. The parties agree to first meet within three weeks of the Effective Date, and regularly thereafter, to negotiate additional reform measures to address remaining areas of non-compliance identified in the Court's Memorandum Opinion dated March 30, 2007. On or near the date of the initial meeting, the parties will agree on a schedule for negotiations with timelines. The parties agree to give these negotiations high priority and to conclude the negotiations within five months from the Effective Date. These additional reform measures include supported employment and meaningful integrated day activities, least restrictive environment, case management, individual service plans, protection

from harm, the incident management system, and mortality investigation findings. The parties agree that the first negotiation meeting will address supported employment and meaningful integrated day activities.

Health Care Coordination and Planning

13. The defendants will significantly expand their efforts to address the direct health care needs of individuals with developmental disabilities. The health care quality measures, as set forth in this Agreement, are designed to address the quality, availability, access to and/or consistent implementation of health care to achieve positive health care outcomes and improve the overall quality of life. Through these health care measures, the overall system of supports for persons with developmental disabilities, as managed by DDS, will be greatly enhanced and strengthened, including the ability of the DDA to effectively operate a continuous quality improvement system for all individuals served. These health care quality measures are to be based on current, generally accepted practices so as to achieve sustainable systemic change in meeting the health care needs of individuals with developmental disabilities.

14. To achieve specific outcomes and to enhance the promotion of cultural competency in health care services, the defendants will create a Health Care Quality Initiative ("Initiative"). Within 120 days of the Effective Date,[2] as part of this Initiative, DDS will enter into a contractual relationship, as appropriate, with the Office of Community-Based Partnerships at The George Washington University School of Medicine and Health Sciences, the University Center for Excellence in Developmental Disabilities at Georgetown University, and/or other universities and entities as deemed necessary. DDS anticipates that the Initiative will be led by The George Washington University's Office of Community-Based Partnerships, and that at the outset, the Assistant Dean of the Office of Community-Based Partnerships will serve as the lead for coordinating the overall efforts of the Initiative. The parties recognize that the specific contractual relationships have not yet been determined and that DDS will continue to work with these universities and other entities to determine the specific contractual relationships by and among them.

15. Within 150 days of the Effective Date, the Initiative will establish an Advisory Board charged with the mission to pursue health care systems reform focused on the unique needs of people with intellectual and developmental disabilities. The Initiative will select for the

[2] Defendants commit to developing and implementing remedial measures on or before the time frames set forth in this Agreement. The defendants will work closely with the individuals identified in paragraph 6, and will notify them in advance if it appears that any deadlines might be missed.

Advisory Board well-respected clinicians and other developmental disabilities professionals, from across the Washington, D.C. metropolitan area, who are steeped in current, generally accepted practice, very knowledgeable about how to effectively deliver adequate and appropriate services to persons with developmental disabilities, and generally understand how best to meet the individualized needs of persons with developmental disabilities. This Advisory Board will meet regularly and will serve as the catalyst to stimulate work on health policy, education, finance and reimbursement, credentialing and legislation in the District as it pertains to improving health care services for individuals with developmental disabilities. The Advisory Board will be convened by the D.C. Area Health Education Center (AHEC), administered by The George Washington University's Office of Community-Based Partnerships.

16. Within 180 days of the Effective Date, the Advisory Board will convene a sub-committee on Clinical Quality comprised of top-notch medical and allied health professionals from across the Washington, D.C. metropolitan area, to advise the Initiative with regard to subject matter expertise and leadership. The sub-committee will meet regularly.

17. Within 180 days of the Effective Date, the Initiative will establish close ties with the Developmental Disability Nursing Association ("DDNA") to develop increased opportunities for nursing professionals to access learning opportunities for professional development and obtain DDNA certification.

18. Within 150 days of the Effective Date, the Initiative will initiate an assessment of dental health resources and propose strategies to increase access to high-quality dental health professionals to work effectively with individuals supported by DDA. The assessment will be completed after initiation in a timely manner. The defendants will promptly evaluate and consider for timely implementation those recommendations and otherwise take effective steps to improve the quality of and/or access to dental care for affected individuals to meet their needs.

19. Within 150 days of the Effective Date, the Initiative will initiate an assessment of psychiatric and behavioral health resources. The assessment will be completed after initiation in a timely manner. The Initiative will propose, and the District will develop and implement, strategies to enhance access to high-quality psychiatric and behavioral health services, as well as strategies to increase the expertise of behavioral health professionals to work effectively with persons who have challenging behavior problems or a dual diagnosis of mental illness. The defendants will promptly evaluate and consider for timely implementation those recommendations of the Initiative with regard to psychiatric and behavioral health reforms and otherwise take effective steps to improve the quality of and availability of psychiatric and behavioral services for affected individuals to meet their needs.

20. Within 150 days of the Effective Date, the Initiative will recruit a high-quality psychiatric health professional with experience in effectively treating persons with developmental disabilities – either a psychiatric nurse practitioner or psychiatrist – to provide direct services for individuals with developmental disabilities who need enhanced mental health care. This

professional may be aligned with a community health clinic or a university medical center, to be determined.

21. Throughout the term of this Agreement, the Initiative will continue to develop and implement measures to recruit high-quality health care professionals who have experience in effectively meeting the needs of persons with developmental disabilities, including primary care physicians ("PCPs"), physician assistants, nurse practitioners, other medical specialists and nurses, to work with individuals with developmental disabilities, through, wherever appropriate and needed, physician extender programs, medical homes, university residency programs, and/or individual or clinic-based practices accepting individuals with developmental disabilities. The identification and recruitment of such health care professionals will increase the number of health care professionals and health care options available to individuals supported by DDA and others in the community. The Initiative will better link the private health care community to persons with developmental disabilities, and will continue to build expertise between and among practitioners.

22. Within 150 days of the Effective Date, the Initiative will include an external Health Care Quality Enhancement Unit ("Unit") dedicated to quality assurance and improvement of health care delivery and health outcomes through monitoring, training, and ongoing technical assistance for the DDA service system. The Unit shall be comprised of high quality health care professionals with experience in effectively treating persons with developmental disabilities. The Unit will immediately provide additional capacity to meet the health care needs and improve quality of life for individuals supported by DDA. The Unit will act as an agent of the District to provide ongoing clinical quality assessment and oversight of the health management plans and interventions, as well as provide ongoing technical assistance and training in the DDA provider community. The Unit will also participate and provide consultation in interdisciplinary treatment teams to ensure effective person-centered planning, and to assist in ensuring successful transfers between and among providers, hospitals, and long-term care and rehabilitation locations. Any discrepancies or failure to perform needed functions and responsibilities related to quality health outcomes by the DDA service provider or the DDA service coordinator, as per DDS/DDA policies and procedures, or other inconsistencies with District regulations, will be reported to the DDS/DDA administrator assigned to manage this element of the Initiative for enforcement. The Unit will work with DDA as needed to ensure the discrepancies, failures, inconsistencies, or other problems are corrected by the provider within specified timelines by DDS/DDA. If the provider is unable or unwilling to implement prompt corrective measures, the defendants will take appropriate and prompt enforcement action, including terminating the provider.

23. The Unit will have a Director and a part-time Medical Director, and will employ high-quality nurses and/or other high-quality allied health professionals who have experience effectively meeting the needs of persons with developmental disabilities. The number of Unit nurses and other allied health professionals will be dictated by the needs of individuals with developmental disabilities supported by DDA. At this time, the defendants estimate that consumers will require approximately 12 full-time equivalent ("FTE") nurses and other allied health professionals. In collaboration with the work group established in paragraph 6, the

defendants agree to regularly re-assess this number and increase or decrease it based on the needs of this individuals supported by DDA. The Director and Medical Director will not be included in the calculation of the 12 FTE's within the Unit. Initially, the Unit nurses and other allied health professionals will be assigned to developmental disabilities residential provider organizations listed on the DDA Watch List, providers serving individuals on the high health risk list, and the individuals served by those organizations. Ongoing duties and responsibilities will be developed with input from the work group as established in paragraph 6.

24. Within 210 days of the Effective Date, the Initiative will establish a pilot, in collaboration with the District, to deliver "enhanced primary care coordination" for individuals considered high risk, not to exceed 200 individuals, served by the DDA Medicaid Home and Community-based Services Waiver. The Initiative will enter into agreements with certain high-quality PCPs who have experience effectively meeting the needs of persons with developmental disabilities who currently or will serve individuals supported by DDA, to participate in this pilot project. The Initiative will provide a payment to the PCPs for time spent participating in enhanced care coordination. This pilot will establish at least quarterly meetings between the PCP, the DDA Service Coordinator, the provider agency supervising Registered Nurse, and the assigned Health Care Quality Enhancement Unit representative to assure health care services have been implemented and are coordinated among and between health care professionals for each of the pilot program participants. The enhanced care coordination fee will be established by the Initiative's Advisory Board. If successful in improving health care outcomes, this pilot will be extended to other class members.

25. Within 90 days of the Effective Date, the defendants will require ICF/MR medical directors to meet with the DDA Service Coordinator, the provider agency supervisory Registered Nurse, the assigned Health Quality Enhancement Unit representative, and other interested parties, on a quarterly basis to assure health care services have been implemented and are coordinated among and between health care professionals.

26. The Initiative will create and then maintain a regularly-updated electronic database with current resources of high-quality medical, nursing, dental, psychiatry, and behavioral health professionals in the District and Maryland who accept Medicaid and will serve individuals with developmental disabilities, arranged by provider zip code and type of service offered, and will maintain a virtual library for health care professionals to communicate current health care guidelines and current, generally accepted practices.

27. Within 150 days of the Effective Date, the Initiative will: participate in monthly Quality Improvement Committee, Human Rights Committee, and Mortality Review Committee meetings for the express purpose of identifying provider agency, DDA and District-wide training and technical assistance needs; will conduct ongoing analysis of provider agency trends, especially with regard to individual outcome measures, including but not limited to medication errors, health indicators, injuries, use of emergency rooms, unexpected hospitalizations, and restraints; will work with the District's Medicaid Agency to increase knowledge of the needs of individuals with developmental disabilities and will analyze claims data to assess diagnostic and utilization

data as it pertains to developing new measures to meet unmet needs, and to address high incidence health conditions; and will propose key health indicators that can be measured for ongoing performance and outcome measurement. Based on all this, the defendants will promptly develop and implement training and technical assistance wherever needed, promptly develop and implement measures to address unmet needs, especially for those at high risk, and promptly develop and implement measures to address identified systemic issues.

Other Health Care Measures

28. The parties recognize how important direct care staff are in terms of meeting health care needs, especially for persons with developmental disabilities who may not be able to provide medical histories or communicate effectively about, or even recognize, their own signs and symptoms. Direct care staff play an integral role in communicating signs and symptoms and other important health care information and data to health care professionals during clinical visits and through the health care and other charts. Most importantly, perhaps, they need to be able to recognize proactively and at an early stage when health status has changed and needs prompt attention. The defendants, in conjunction with the Initiative, will develop and implement direct support professional training specific to assisting individuals in effectively managing health care, proactively identifying health concerns, and communicating effectively with health care professionals in a timely manner.

29. During the term of this Agreement, the defendants will study successful staff recruitment and retention techniques and incentives utilized by community providers in the defendants' system and by successful community providers throughout the country in order to identify specific measures for adoption. These measures shall be compiled in a simple and effective plan to distribute to all providers to address how to improve the quality of direct support professionals in the DDA system. The defendants shall ensure that the providers implement the plan in a timely manner.

30. The defendants will investigate the development of a Quality Improvement Organization proposal for an external clinical peer review process.

31. Within 180 days of the Effective Date, the defendants will utilize the information gleaned from the Initiative to issue regular health care (and other) bulletins to all providers with regard to systemic issues that may impact class members across the defendants' system. The bulletins should be written by clinical and professional personnel to alert providers to issues that demand their attention and they should set forth clear expectations with regard to steps providers need to take to meet client needs. These bulletins need not come out at any particular interval, but should be issued promptly whenever a health care (or other) issue arises.

32. Within 90 days of the Effective Date, the defendants will develop and implement a plan to more effectively implement recommendations from death investigations.

33. Within 180 days of the Effective Date, the defendants will enhance crisis stabilization and intervention services by developing crisis residential capacity (2 crisis beds). The defendants will also ensure that there is at least one professional with experience effectively meeting the behavioral and mental health needs of persons with developmental disabilities on at least one existing mental health crisis intervention team. The defendants shall ensure that the team with this developmental disability professional acts promptly to meet the needs of any class member in a behavioral or mental health crisis.

34. Within 120 days of the Effective Date, the defendants, through contracting, will offer values-based and competency-based training for providers under contract with DDS/DDA, providers' staff, and for District employees and contracted employees who work with clients of DDS/DDA. Additionally, within 180 days of the Effective Date, the defendants will develop requirements for training as a prerequisite for all new providers/staff recruited into the system and for individuals who work in the system. Training requirements must be incorporated into all human care agreements. The defendants will implement a program to impose contractual sanctions for providers who do not comply with the above-referenced provisions of the human care agreements. The requisite curriculum components include: (a) a mandatory values-based training program; and (b) a mandatory competency-based training program based on current, generally accepted practices in the field.

35. Within 150 days of the Effective Date, the defendants will seek, on an expedited basis, to evaluate and propose a new methodology to establish ICF/MR rates that do not undermine the District's efforts to provide quality health care to individuals with developmental disabilities. In the event that the Department of Health's Medical Assistance Administration has insufficient staff to dedicate to this initiative, it will contract with a Medicaid expert to implement this effort.

36. Within 60 days of the Effective Date, the defendants will provide a guidance letter to ICF/MR providers to clarify that the medical directors of the ICFs/MR need not be the primary care doctors for the individual residents of the ICF/MR, and provide guidance when an ICF/MR medical director can provide primary care services under the fee-for-service Medicaid system.

37. Pursuant to the Court's Short-Term Order of September 12, 2007, the defendants shall continue efforts to attract and retain high-quality residential providers to replace those existing providers in the system which cannot or will not effect needed change to meet class members' health care needs. To that end, within 90 days of the Effective Date, Defendants will develop and implement remedial measures to address the individual and systemic concerns outlined in the December 30, 2007 report of its Health Resources Partner, especially those concerns set forth on pages 82-87 of that report.

38. Within 90 days of the Effective Date, Defendants will develop an effective plan to provide for the most integrated community alternatives for DDA consumers needing close health care services. This plan will augment and enhance measures already begun in this regard. The plan will be implemented after initiation in a timely manner.

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WHEREFORE, the plaintiff-intervenor and the defendants having agreed to the provisions in the Health Care Agreement set forth above, and the Court being advised in the premises, this Health Care Agreement is hereby entered as the Order and Judgment of this Court.

It is so ordered, this ____ day of _____, 2008, at Washington, D.C.

_____
HON. ELLEN SEGAL HUVELLE
United States District Judge